

APPEAL NO. 170029
FILED MARCH 10, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 9, 2016, with the record closing on November 28, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of (date of injury), extends to aggravation of pre-existing chronic glomerulonephritis, chronic kidney disease and chronic renal failure, but does not extend to focal glomerulosclerosis, chronic bilateral ethmoid and maxillary sinusitis or equivocal evidence of a 6 mm pituitary microadenoma.

The appellant/cross-respondent (carrier) appealed the hearing officer's determinations that the compensable injury of (date of injury), extends to a aggravation of pre-existing chronic glomerulonephritis, chronic kidney disease and chronic renal failure, arguing insufficiency of the evidence to support such determinations. The respondent/cross-appellant (claimant) appealed the hearing officer's determinations that the compensable injury of (date of injury), does not extend to focal glomerulosclerosis, chronic bilateral ethmoid and maxillary sinusitis or equivocal evidence of a 6 mm pituitary microadenoma, arguing that such determinations are contrary to the evidence.

DECISION

Reversed and remanded.

The claimant was injured on (date of injury), when the truck he was driving left the road and rolled over. The carrier has accepted as compensable left and right rib fractures, right ankle sprain and bimalleolar fracture, scalp laceration, headaches, concussion, depression, deep vein thrombosis, acute hypertension, acute kidney failure, acute hyperglycemic, acute proteinuria, acute pulmonary edema, acute dyspnea, acute orthopnea and acute peripheral edema. Pursuant to a Benefit Dispute Agreement (DWC-24) signed September 3, 2015, the parties also agreed that the compensable injury extends to acute congestive heart failure and acute renal failure.

(Dr. J), appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor to address maximum medical improvement, impairment rating, ability to return to work and extent of the compensable injury, examined the claimant on July 12, 2016, and was asked to determine whether the compensable injury extends to focal glomerulosclerosis, chronic kidney disease, chronic bilateral ethmoid and maxillary sinusitis and equivocal evidence of a 6 mm pituitary microadenoma. In his report, Dr. J determined that each of these diagnoses was pre-existing and not caused by trauma. Although not requested to do so by the

Division, Dr. J opined further that the compensable injury extends to aggravation of pre-existing chronic glomerulonephritis with resultant acute renal failure progressing to chronic renal failure caused by administration of medication pursuant to claimant's treatment for the compensable injury.

The hearing officer's determination that the compensable injury of (date of injury), does not extend to chronic bilateral ethmoid and maxillary sinusitis or equivocal evidence of a 6 mm pituitary microadenoma is supported by sufficient evidence and is affirmed.

The hearing officer indicated in her decision that, given the fact that Dr. J is familiar with the claimant's medical history and treatment following the compensable injury, his opinion is credible and persuasive in determining that the compensable injury extends to aggravation of pre-existing chronic glomerulonephritis, chronic kidney disease and chronic renal failure. It is noted; however, that in his report, Dr. J indicates that the compensable injury does not extend to chronic kidney disease despite his determination that the compensable injury does extend to chronic renal failure. The hearing officer also determined, as opined by Dr. J, that the compensable injury does not extend to focal glomerulosclerosis. In his report dated July 12, 2016; however, Dr. J stated "It should be noted that focal glomerulosclerosis, focal glomerulonephritis and chronic glomerulonephritis are the same thing" but he fails to explain how, if these conditions are the same, the compensable injury can extend to aggravation of chronic glomerulonephritis but not extend to focal glomerulosclerosis.

Because of the inconsistencies contained in Dr. J's report upon which the hearing officer based her determinations, we reverse the decision of the hearing officer that the compensable injury of (date of injury), extends to aggravation of pre-existing chronic glomerulonephritis, chronic kidney disease and chronic renal failure, but does not extend to focal glomerulosclerosis and remand the issue of extent of injury to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to chronic bilateral ethmoid and maxillary sinusitis or equivocal evidence of a 6 mm pituitary microadenoma.

We reverse the hearing officer's decision that the compensable injury of (date of injury), extends to aggravation of pre-existing chronic glomerulonephritis, chronic kidney disease and chronic renal failure, but does not extend to focal glomerulosclerosis, and remand the issue of extent of injury concerning such conditions to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. J is the designated doctor in this case. On remand, the hearing officer is to determine if Dr. J is still qualified and available to serve as designated doctor. If Dr. J is still qualified and available to serve as the designated doctor, the hearing officer is to send a request for clarification to Dr. J asking that he explain why he determined that the compensable injury of (date of injury), does not extend to focal glomerulosclerosis but does extend to aggravation of pre-existing chronic glomerulonephritis when he indicated in his report of July 12, 2016, that “focal glomerulosclerosis, focal glomerulonephritis and chronic glomerulonephritis are the same thing”. The hearing officer is also to ask Dr. J to explain why he determined that the compensable injury of (date of injury), does not extend to chronic kidney disease but does extend to chronic renal failure.

If Dr. J is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed to determine whether the compensable injury of (date of injury), extends to aggravation of pre-existing chronic glomerulonephritis, chronic kidney disease, chronic renal failure, and/or focal glomerulosclerosis.

The parties are to be provided with the designated doctor's response to the hearing officer's request for clarification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination concerning extent of the compensable injury that is consistent with the evidence and this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge